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CHAIR



**Rex W. Cowdry, M.D.**  
EXECUTIVE DIRECTOR

## **MARYLAND HEALTH CARE COMMISSION**

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## **MARYLAND HEALTH CARE COMMISSION**

**Thursday, December 18, 2008**  
**Minutes**

Chair Moon called the meeting to order at 12:40 p.m.

Commissioners present: Conway, Falcone, Jefferson, Krumm, McLean, Moore, Olsen, Ontaneda-Bernales, Todd, and Worthington.

### **ITEM 1.**

#### **Approval of the Minutes**

Commissioner Krumm made a motion to approve the minutes of the November 20, 2008 meeting of the Commission, which was seconded by Commissioner Todd, and unanimously approved.

### **ITEM 2.**

#### **Update of Activities**

Rex Cowdry, M.D., Executive Director, said that, staff provided the Commission with an update on the Health Insurance Partnership, which describes outreach efforts, as well as enrollment updates.

Pam Barclay, Director for the Center for Hospital Services, noted that staff provided a handout of the preliminary primary PCI 2<sup>nd</sup> quarter data for 2008.

Ben Steffen, Director for the Center for Information Services and Analysis, introduced and welcomed new staff member, Falguni Jani. Ms. Jani will be working for David Mitchell, Data Processing Assistant Director, as Webmaster for the Commission.

Mr. Steffen said that report on the Task Force on Health Care Access and Reimbursement is complete and will be submitted to the Governor and the Speaker of the House. He also said this year's Health Insurance Coverage in Maryland report will be released in January.

### **ITEM 3.**

#### **ACTION: Certificate of Need**

- Shady Grove Adventist Nursing and Rehabilitation Center, Docket No. 08-15-2281

Shady Grove Adventist Nursing and Rehabilitation Center applied for a Certificate of Need to add four beds in renovated space at the facility. Paul Parker, Chief, Certificate of Need, presented the staff recommendation. Mr. Parker said the facility proposed replacing and relocating 4 beds from a “sister” nursing home, Springbrook Nursing and Rehabilitation Center, which is also in Montgomery County, to complete the new unit as a 16-bed, all private room unit. He said the renovation was funded through a mortgage loan and cash. Mr. Parker said staff recommended that the proposed project be approved, with conditions. Commissioner Krumm made a motion to accept the staff recommendation, which was seconded by Commissioner Jefferson and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

**ACTION: Certificate of Need for Shady Grove Adventist Nursing and Rehabilitation is hereby APPROVED, with conditions.**

- Kennedy Krieger Institute, Docket No. 08-24-2282

Kennedy Krieger Institute applied for a Certificate of Need to relocate two inpatient special pediatric hospital units. Joel Riklin, Health Policy Analysis, presented the staff recommendation. Mr. Riklin said the facility proposed renovating 62,261 gross square feet of space at 1750 East Fairmont Avenue and relocate its 16-bed pediatric neurobehavioral program and its 6-bed pediatric feeding disorder program from 707 North Broadway into the renovated space at 1750 East Fairmont. He said the total project cost of \$5,500,000 and will be funded by fund raising and grants. Mr. Riklin said staff recommended that the proposed project be approved. Commissioner Conway made a motion to accept the staff recommendation, which was seconded by Commissioner McLean and unanimously approved. Commissioner Krumm recused herself from consideration of this matter.

**ACTION: Certificate of Need for Kennedy Krieger is hereby APPROVED.**

### **ITEM 4.**

#### **ACTION: Benefit Changes in the Comprehensive Standard Health Benefit Plan**

- COMAR 31.11.06 – Comprehensive Standard Health Benefit Plan – Dependent Coverage up to age 25

Janet Ennis, Chief, Small Group Market, presented proposed permanent regulations to extend coverage for dependent children up to age 25 in the small group market. Ms. Ennis said this coverage is currently offered in the individual and full-insured large group markets in Maryland. She said this mandate could provide health coverage to more individuals in the State and could also help to reduce uncompensated care. Ms. Ennis noted that the Commission approved the draft regulations to cover dependents up to age 25 at their November public meeting. She said, once approved, the proposed permanent regulations would apply to policies effective July 1, 2009. Commissioner Ontaneda-Bernales made a motion to adopt

the section of the proposed regulations that requires coverage for certain dependents to age 25, which was seconded by Commission Olsen and unanimously approved.

**ACTION: COMAR 31.11.06 – Comprehensive Standard Health Benefit Plan – Adopt as Proposed Permanent Regulations that require coverage for certain dependents to age 25 is hereby APPROVED.**

- Bariatric Surgery

Bruce Kozlowski, Director of the Center for Health Care Financing and Policy, presented an analysis prepared by the Commission's consulting actuary, Mercer, on coverage for bariatric surgery in the small group market. Mr. Kozlowski provided background information and discussed the medical, social, and financial impact of adding bariatric surgery as a covered service in the small group market. He said staff recommended providing this coverage in the small group market, subject to certain conditions. Mr. Kozlowski noted that bariatric surgery is currently a mandated benefit in the individual and fully-insured large group markets in Maryland. Commissioner Krumm made a motion to adopt the section of the proposed regulations that adds bariatric surgery as a covered benefit in the small group market, which was seconded by Commissioner Jefferson and unanimously approved.

**ACTION: COMAR 31.11.06 – Comprehensive Standard Health Benefit Plan – Adopt as Proposed Permanent Regulations that adds bariatric surgery as a covered benefit, subject to certain restrictions, is hereby APPROVED.**

## **ITEM 5.**

**PRESENTATION:** Annual Mandated Health Insurance Services Evaluation

Janet Ennis, Chief, Small Group Market, presented the Annual Mandated Health Insurance Services Evaluation report, as required under Section 15-1501 of the Insurance Article. She said the annual mandate report included an analysis on the medical, social, and financial impact of proposed mandated health insurance services that failed during the preceding legislative session. Ms. Ennis said that this year's report includes an analysis on five proposed mandates: coverage for autism spectrum disorder; extending the current mandate on coverage for in vitro fertilization; coverage for a 48-hour inpatient stay following mastectomy; coverage for prosthetic devices; and coverage for the shingles (herpes zoster) vaccine. Ms. Ennis asked that the Commission approve the release of the report to the General Assembly. Commissioner McLean made a motion to approve the release of the report, which was seconded by Commissioner Falcone and unanimously approved.

**ACTION: Release of the Annual Mandated Health Insurance Services Evaluation report, is hereby APPROVED.**

## ITEM 6.

### **PRESENTATION:** Health Insurance Coverage Among College Students

House Bill 603 of the 2008 Legislative Session would have required all Maryland institutions of higher education to require full-time students to obtain health insurance coverage as a condition of enrollment. The MHCC, in consultation with the Maryland Higher Education Commission, was asked to report on uninsured college students, student insurance plans, and efforts to increase the number of insured students. Ben Steffen, Center Director for Information Services and Analysis, and Nicole Stallings, Chief, Government Relations and Special Projects, presented the study which identified four options for potential legislative action. Under the first option, the General Assembly would require all institutions of higher education to provide information on insurance coverage options as part of the registration process. The Commission could help develop this resource, which would include information about the extension of coverage for certain dependents to age 25, as well as information about Maryland's Health Insurance Plan (MHIP), Medical Assistance for Families and Primary Adult Care (PAC), and individual policies. Option two would require all public institutions to offer health insurance coverage. This would primarily affect Salisbury University and St. Mary's College, the only public institutions that do not currently offer coverage. Under option three, all public and private four-year institutions would be required to offer coverage. This option would affect Salisbury University and St. Mary's College, as well as three small, private institutions that responded to the survey. Lastly, the fourth option would require all institutions of higher education to mandate coverage. This would raise benefit design issues and contracting, financing, and subsidy questions that would need to be worked out with the institutions of higher education, the Maryland Higher Education Commission, the Maryland Insurance Administration, and representatives from the insurance carriers; however, this approach would provide a unique means for young adults to obtain affordable health insurance coverage. Staff asked the Commission for approval to release the report to the General Assembly. Commissioner Krumm made a motion to approve the release of the report, which was seconded by Commission Jefferson and unanimously approved.

**ACTION: Release of the Health Insurance Coverage Among College Students report, is hereby APPROVED.**

## ITEM 7.

**ACTION:** COMAR 10.25.02 - User Fee Assessment of Health Care Practitioners and COMAR 10.25.03 – User Fee Assessment of Payers, Hospitals, and Nursing Homes

Bridget Zombro, Deputy Director for Administration, presented the User Fee Assessment Study and proposed permanent regulations. Ms. Zombro said that every four years, the Commission performs a workload study to determine how the Commission's total assessment will be allocated among payers, hospitals, nursing homes, and licensed health professionals. She said that House Bill 800, passed during the 2007 legislative session, required the Commission to study the extent to which other health care providers that are not currently assessed utilize the Commission resources and to discuss the feasibility and desirability of extending a use fee to additional types of providers regulated by the Commission. Ms. Zombro said staff studied the feasibility of including ambulatory surgery facilities into the user-fee process, but concluded that 95% of ambulatory surgery facilities do not benefit from the services provided by the Commission, therefore, the user fee should not be extended to that industry at this time. She noted that staff will consider options for inclusion of ambulatory surgery facilities and other health care providers in all future workload distribution studies. Staff recommended amending the regulations to reflect the cost allocations identified in this study. Ms. Zombro said that hospitals will be assessed 31%,

nursing homes 22%, insurance companies 29%, and health occupation boards 18% of the total assessed amount. She noted that the proposed regulations would reflect an increase in the average annual wage for the health care practitioners to \$36,280. Ms. Zombro also noted that the proposed regulations would retain the cap on the total assessments at \$12 million and continue to study the feasibility of assessing other health care providers who benefit from the services provided by the Commission. Following discussion, Commissioner Falcone made a motion to adopt the regulations as proposed, which was seconded by Commissioner Conway and unanimously approved.

**ACTION: COMAR 10.25.02 - User Fee Assessment of Health Care Practitioners and COMAR 10.25.03 – User Fee Assessment of Payers, Hospitals, and Nursing Homes, which is hereby ADOPTED as Proposed Permanent Regulations.**

## **ITEM 8.**

**ACTION: COMAR 10.24.01 – Certificate of Need for Health Care Facilities – Proposed and Emergency Action on Regulations: Definition of Participating Entity**

Paul Parker, Chief, Certificate of Need, presented emergency and proposed regulations which would make the municipality or jurisdiction from which the facility is relocating eligible to be designated as a participating entity. Mr. Parker said that “participating entities” are entities recognized by the Commission as qualified to participate formally in the review of Certificate of Need applications in certain ways. He noted that currently, only third party payors and jurisdictions or municipalities where proposed projects will be located can be participating entities. Mr. Parker said staff believes it is appropriate to allow municipalities or jurisdictions from which the facility is relocating eligible to be designated as a participating entity and therefore, recommended that the Commission adopt the proposed regulation on an emergency basis. He also noted that at least one hospital replacement and relocation project are anticipated to be filed in the coming year. Commissioner Todd made a motion to adopt the regulations as proposed and emergency, which was seconded by Commissioner Jefferson and unanimously approved.

**ACTION: COMAR 10.24.01 – Certificate of Need for Health Care Facilities – Proposed and Emergency Action on Regulations: Definition of Participating Entity, which is hereby ADOPTED as Proposed and Emergency Regulations.**

## **ITEM 9.**

**ACTION: COMAR 10.24.10 – State Health Plan for Facilities and Services: Acute Care Hospital Services**

Mr. Parker presented regulations for a replacement Acute Care Services chapter of the State Health Plan. He said the proposed regulations, which provide standard for the Certificate of Need or exemption review of capital projects proposed by acute care general hospitals, were approved at the September public meeting of the Commission. Mr. Parker said staff received two public comments on the proposed permanent regulations. He noted that the comments addressed one general standard concerning the public availability of hospital charge information and a project review standard concerning construction of shell space in construction projects requiring Certificate of Need authorization. Mr. Parker summarized staff’s evaluation of the comments, noting that a number of changes were incorporated into the proposed permanent regulations, based on comments received in two informal comment periods, however, staff is

not recommending changes in the two standards addressed by the latest round of comments. Staff recommended adopting the replacement COMAR 10.24.10 as a final regulation. Commissioner Falcone made a motion to adopt the proposed regulations as final, which was seconded by Commissioner Moore and unanimously approved.

**ACTION: COMAR 10.24.10 – State Health Plan for Facilities and Services: Acute Care Hospital Services, is hereby ADOPTED as Final Regulations.**

#### **ITEM 10.**

**PRESENTATION:** An Alternative Approach to the Regulation of Home Health Agencies in Maryland

Linda Cole, Chief, Long Term Care Policy and Planning, presented the report “An Alternative Approach to the Regulation of Home Health Agencies in Maryland.” Ms. Cole said that the Chair of the House Health and Government Operations Committee asked the Commission and the Office of Health Care Quality (OHCQ) to develop an alternative regulatory approach to home health agencies that, in the absence of Certificate of Need, would assure responsible growth and continued high quality. Ms. Cole provided background information on the current regulatory framework for agencies providing services in the home. She also provided detailed information on current home health agency services in Maryland, as well as data from other states. Ms. Cole said that the Commission and the Office of Health Care Quality convened a Home Health Agency Advisory Group to assure appropriate consultation and timely input into the development of a regulatory alternative. She identified the goals guiding the development of an alternative process and provided recommendations. Staff recommended establishing a “provisional home health agency licensure” program through legislative action; instituting a moratorium on the issuance of new Certificate of Needs for home health agencies, pending full implementation of provisional licensure program; enhancing the quality of care assessments; changing all home health agencies to statewide licensure; and applying special provisions to the acquisition of existing or provisional home health agencies to assure quality. A discussion ensued, and the Commission emphasized the need for better performance and satisfaction measures on which to base decisions; a careful, up-front review of potential entrants, whether conducted through a modified certificate of need process or licensure; and consideration of whether there should be a higher threshold applied to all potential providers of home health care, particularly residential service agencies. Staff agreed to provide a letter outlining the Commissioners’ remarks which accompanied the report to the Chairman of House Health and Government Operations Committee. Commissioner Falcone made a motion to approve the release of the report, which was seconded by Commissioner Todd and unanimously approved.

**ACTION: Release of the report titled An Alternative Approach to the Regulation of Home Health Agencies in Maryland, is hereby APPROVED.**

#### **ITEM 11.**

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 4:00 p.m., upon motion of Commissioner Tood, which was seconded by Commissioner Conway, and unanimously approved.